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THE LANAI DEAL IS NOW BLOCKED How The Outbreak Looked At Hilo

JUDGE DE BOLT DECLARES LANAI EXCHANGE ILLEGAL

FILES AN OPINION THIS MORNING SUSTAINING THE INJUNCTION OBTAINED BY L. L. McCANDLESS PREVENTING LAND COMMISSIONER PRATT FROM MAKING EXCHANGE OF LANDS—HOLDS EXCHANGE TO BE UNLAWFUL, ILLEGAL AND UNWARRANTED.

Judge De Bolt this morning filed an opinion in the famous Lanai injunction case in which he sustained L. L. McCandless' complaint, against Governor George H. Carter and Land Commissioner Pratt, respondents. The opinion overrules the demurrer of Pratt and the injunction preventing him from making the proposed exchange of the government lands on Lanai stands. The injunction as relating to Governor Carter was dissolved some days ago. Pratt is given 10 days in which to answer the bill in equity for an injunction, otherwise the injunction will be made permanent.

The full text of the opinion is as follows: This is a bill in equity whereby the complainant as a citizen and taxpayer seeks to have the Commissioner of Public Lands restrained from exchanging certain public lands on the island of Lanai for other lands; and also to have the governor enjoined from approving of such exchange.

Upon the bill being filed an order, temporarily restraining the respondents was signed. Thereafter, the Attorney General, appearing specially on behalf of the governor, moved that the temporary restraining order be dissolved and the bill dismissed as to the governor on the grounds that the court was without jurisdiction of the person of the respondent as governor, and that the bill and temporary restraining order was an attempt to interfere with the governor in the exercise of his powers, and that the order was also an unwarranted and illegal assumption of judicial control of the official acts of the governor.

The court orally granted this motion and ordered that the temporary restraining order be dissolved and that the bill be dismissed as to the governor; the court in so ruling taking into consideration all the grounds urged on behalf of the motion, but more particularly the ground that the restraining order was an attempt to interfere with the discretionary powers of the governor, and also upon the further ground that in no event could or would the governor be called upon to exercise his discretion until the commissioner had made such exchange, which he could not do during the continuance of the temporary restraining order, and if this order were made permanent that would necessarily end the whole matter. The inability of the commissioner to act pending these proceedings obviating the necessity, if any existed, for the continuance of the temporary restraining order as to the governor.

The Attorney General, on behalf of the Commissioner, interposed a demurrer to the bill which was orally argued and submitted by counsel; whereupon the court took the matter under advisement, requesting counsel to file briefs upon two points raised by the demurrer, namely:

(1) Whether or not complainant as a citizen and taxpayer had the right to bring and to maintain this suit.

(2) Whether or not the threatened act of the Commissioner to exchange said public lands for other lands is unauthorized by law and therefore illegal.

As to the first point, the Attorney General contends that the complainant can not maintain this suit as a citizen and taxpayer, unless he has suffered

some special injury not in common with others, and that it is incumbent upon him to allege this special injury to himself, as being different from that suffered by the community at large.

The general rule governing the jurisdiction in equity against public officers is that equity will interpose in behalf of individuals to restrain all illegal and unauthorized acts by them, under color and claim of official authority which tend to impair public rights.

Spelling, Injunction etc., Secs. 609-614.

Mechem on public officers, at Sec. 996, after some discussion as to the right of a citizen or taxpayer to maintain suits of this character, and also as to the duty of the Attorney General in such suits in some states, says: "But by the great preponderance of authority, it is settled that any single taxpayer, or any number of them, may intervene to prevent by injunction an unlawful levy, appropriation or expenditure by which the burden of the taxpayer is such would be unjustly and illegally increased, and that a special or peculiar interest or injury is not indispensable."

In *Castle vs. Kapena*, 5 Haw. 27, Chief Justice Judd said: "I am of the opinion that the petitioners, as citizens and taxpayers, have the right to sue out this writ. They have, as taxpayers, the right to endeavor to prevent a public officer from doing what is an injury to the public good. There are authorities on both sides of the question, but the current seems to be in favor of the right, and the case of *Crampton vs. Zabriske*, 101 U. S. 609."

Also, in *Lucas vs. Amer. Haw. E. & C. Co.*, 18 Haw. 85, the court said: "The right of a taxpayer to bring suit to restrain a public officer from doing an illegal act has been settled in this jurisdiction since the case of *Castle et al. vs. Kapena*, 5 Haw. 27 (1885). If the question could be considered an open one we should follow the rule laid down in *Crampton v. Zabriske*, 101 U. S. 609, and in *R. P. Co. v. Hall*, 91 U. S. 549, cited in *Castle v. Kapena*. It is not necessary that the plaintiff should show actual damage to himself and to all others similarly situated, as is contended by the Assistant Attorney General."

Again, in *Castle v. Sec. of Ter.* 16 Haw. 770, wherein the defendant contended that equity has no jurisdiction to grant an injunction against him at the suit of a taxpayer or of a bondholder whose bonds are not shown to be in danger of being defaulted; the court, after holding that a taxpayer could maintain the suit, said: "State decisions for and against the exercise of jurisdiction such as claimed by the plaintiff are interesting and of value to the student of law, but as above stated, the question has been decided by this court in favor of the exercise."

From an examination of the cases cited it clearly appears that the Supreme Court of these islands, under the Monarchy, Republic and Territorial government, have not in a single instance failed to recognize and uphold the right of the taxpayer to institute and maintain suits of this character.

And the reason, as well as the utility of this rule, in this jurisdiction becomes apparent when we stop to consider that the law makes it the duty of the Attorney General to appear in defense

(Continued on Page Seven).

TO CHECK OVERFLOW

(Associated Press Cable to The Star.) WASHINGTON, D. C., January 12.—President Roosevelt today sent a message to Congress urging action to restrain the Colorado River from overflowing its banks in the vicinity of the Salton Sea, as it was shown that the overflow will soon flood the Imperial Valley.

CHAPEL FOR ROYALTY

(Associated Press Cable to The Star.) MADRID, Spain, January 12.—King Alfonso has authorized the opening of a Protestant Chapel at the Royal Palace for the benefit of the Queen's mother.

Highbinders Do Murder

(Associated Press Cable to The Star.) OAKLAND, January 12.—One Chinese merchant was killed and four were wounded in a fight with highbinders in this city.

A. MASON, TRUSTEE BIDS IN HALAWA

THE PLANTATION WAS LEASED AT \$50 MORE THAN THE UPSET RENTAL.

A. Mason, trustee, this morning purchased at auction the lease of the Halawa Plantation at a rental of \$5,950 a year, or \$50 more than the upset rental. The auction rooms of J. P. Morgan were crowded with spectators for it is not often that a chance presents itself of obtaining a lease of a fully equipped sugar plantation and mill in these islands. Prominent among the gathering were Colonel Samuel Parker, Charles M. Cooke, W. A. Kinney, Clive Davies and H. P. Wood.

Some three weeks ago the trustees under the will of the late James Wright gave notice that the Halawa Sugar Plantation, consisting of a mill, certain fee simple lands, leaseholds, water rights and other personal property would be put up for lease at auction at an upset rental of \$5900 a year. This lease is to continue from January 15, 1927, until January 15, 1930. The personal property consisting of growing crops, tools, implements and livestock are to be taken at valuations payable March 15, or 30 days later than was advertised. The property was appraised at about \$100,000.

There were no bidders against Mr. Mason and his offer of \$50 above the upset price obtained for him the lease.

SACHS' SPECIALS. Beginning on Monday at Sachs', big specials will prevail in Lace Curtains, Wash Dress Goods, Alpaca Waists and Turkish Bath Towels; some prices cut in half—a Sachs special means a great saving to you.

SACHS' MONEY SAVING SPECIALS. Thursday, Friday and Saturday will be the last days for big values in Towelings, Table and Shelf Oil Cloth, and Cotton Covert Cloth, at Sachs'. For prices see ad on page 8.

DO NOT EXPERIMENT WITH CROUP.

When a child shows symptoms of croup there is no time to experiment with new remedies, no matter how highly they may be recommended. There is one preparation that can always be depended upon. It has been in use for many years, and has never been known to fail: *Chamberlain's Cough Remedy*. Give it, and a quick cure is sure to follow. For sale by all dealers. Benson, Smith & Co., agents for Hawaii.

PANAMA CANAL BIDS

(Associated Press Cable to The Star.) WASHINGTON, D. C., January 12.—The bids for the construction of the Panama Canal were opened today. The lowest bid was that submitted by W. J. Gilver of Panama and Ashen Hanger of New York who made a combined bid. They offer to do the work on a profit of 8.75 per cent over the cost of the various portions of the canal, as estimated by the United States engineers.

Roosevelt Criticized

(Associated Press Cable to The Star.) WASHINGTON, D. C., January 12.—Senator Tillman today attacked the President's course in regard to the discipline of the colored soldiers. Senator Patterson defended the President.

TO FIGHT TO THE LAST DITCH

TERRITORY WILL MAKE ANSWER TO McCANDLESS' BILL IN LANAI CASE, AND GO WASHINGTON.

F. W. Milverton of the attorney general's department is at work on the answer to the bill in equity, brought by L. L. McCandless in the Lanai land case. The opinion rendered this morning by Judge De Bolt is, of course, a victory for the opponents of Governor Carter and Land Commissioner Pratt. Ten days are given in which Pratt's answer is to be filed and then a final decision will be given by Judge De Bolt.

In event of the case going against the government, Attorney General Peters will carry the matter to the Supreme Court of the Territory and eventually to the United States Supreme Court if necessary.

Planning To Change School Laws

REPUBLICAN LEGISLATIVE COMMITTEE WORKING ON CREATION OF DISTRICT BOARDS.

There will be a meeting of a Republican legislative committee this afternoon for the purpose of discussing the drafting of certain bills to be presented to the next legislature.

One particular matter that is to be considered is amendment to the educational laws, creating district school boards, that shall be under the jurisdiction of the central Board of Education in Honolulu. This measure was one pledged in the Republican territorial platform at Wailuku. Some data was secured today from Superintendent Rabbitt relative to the operations of the present school system and the details of the number of pupils about the islands.

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CLOSE TOUCH

With the most prominent exporting mercantile house of Yokohama, together with the large trade he carries on with the plantation stores all over the islands, enable K. Yamamoto to deal in all kinds of Japanese goods at a smaller price than any other Japanese merchant in Honolulu. Hotel street, near Nuuanu.

SURPRISE TO ALL. Everyone who lunches for the first time at the Criterion is surprised at the excellence of the lunch for 25c. Come today and be surprised.

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THE CLOUDS ABOVE THE GREAT MOUNTAIN WERE CONSECUTUALLY ILLUMINATED BY THE FIRES BELOW—THERE SEEMED A GREAT AREA OF MOLTEN LAVA—SAID TO BE THE FINEST SPECTACLE FROM MAUNA LOA EVER WITNESSED IN HILO.

BY GEORGE F. HENSHALL.

Nearly all Hilo was awakened on Wednesday night by the outbreak at about midnight and by four it had almost disappeared. Before then there was no sign of fire visible. Suddenly a glow began to appear and in a very short time there was a vast illumination of the heavens.

As seen from Hilo, the appearance was that of a lurid column of vapor or smoke, evidently lit up by an immense area of molten lava, probably in the great crater of Mokuaweweoe. The red ascended until it merged with clouds above, and the clouds were deeply colored with the glare.

The width of the column indicated a big area of fire below, and the amount of cloud illumination led many people to estimate that the light must be visible many miles away, possibly over 200, and some thought that Oahu residents might have seen it, especially from an elevation.

The news was rapidly telephoned about Hilo, and neighbors called one another up all over the town. Hundreds of people walked to places where they could see well, some going many blocks in the sort of undress one sees at a big fire in dwelling houses. Wailuku and Wailakea bridges were the best places for a view.

For about two hours the glow maintained its full extent. The oldest residents say that it equalled and possibly exceeded any they had seen. At

SUICIDE'S VICTIM NOT HIS WIFE

CAPTAIN BOWERS PAYS DEAD MAN'S SALARY TO HIS REAL WIDOW—MANY CLAIMANTS.

Captain Bowers of the Bowers' Patrol has in his possession a receipt for \$43.50 with a history. The receipt is signed by Mrs. Charles James, wife of the negro who recently shot a lady, at the time supposed to have been his wife, she dying as a result, and then killed himself. James was an employee of the Bowers' Patrol and on the day he killed himself he had a month's wages coming to him, less the \$1.50 for the night his ghost was on watch at the depot, supposing the man had got so in the habit of watching that he could not quit even in death. Bowers wanted to pay the money where it belonged and made inquiry. At once a score of persons claimed relationship with the suicide, but Bowers discovered that the dead man left a sure-enough widow, the woman he had killed not being his wife and, incidentally, the child who witnessed the crime being an adopted child, or one who looked to James for support.

In the presence of the British consul, James having been a British subject, Bowers paid over the \$43.50 to the widow.

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A MATTER OF HEALTH

ROYAL BAKING POWDER
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M'CANDLESS WAS NOT SURPRISED

SAYS THAT HE THINKS THE GOVERNMENT WILL NOT GO MUCH FURTHER.

"I am not at all surprised at the ruling of Judge De Bolt in the Lanai matter," said L. L. McCandless this morning. "In fact I expected it, but one never can tell you know."

"I feel that now the government will not carry the matter much further, for Judge De Bolt's decision shows that they were clearly in the wrong. I thought before and I think now that the law is clear on the point under discussion, and I feel pleased that my views have been sustained."

"If the government decides to carry the fight on without a let-up they will find me fighting until the last ditch is reached. I am more confident of victory now than I was at first and I was nearly certain then."

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